

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

LAURA BRALEY, Individually, and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

MASHNOON AHMED; CHRISTOPHER ANGELES; BRANDECO, LLC d/b/a brandnex.com; CASAD COMPANY d/b/a Totally Promotional; CUSTOM WRISTBANDS, INC. d/b/a Kulayful Silicone Bracelets, kulayful.com, speedywristbands.com, promotionalbands.com, wristbandcreation.com, and 1inchbracelets.com; AKIL KURJI; AZIM MAKANOJIYA; NETBRANDS MEDIA CORP. d/b/a 24hourwristbands.com and imprint.com; AND ZAAPAAZ, INC. d/b/a WB Promotions, Inc., wrist-band.com, and customlanyard.net,

Defendants.

Case No.: 4:17-cv-03064 (MH)

Judge: Hon. Melinda Harmon

**PLAINTIFF KIMBERLY KJESSLER'S REPLY IN FURTHER SUPPORT OF MOTION FOR LIMITED INTERVENTION**

Plaintiff Braley concedes that she “does not oppose Oregon Action plaintiff Kjessler’s motion to intervene in the Texas Action for the purpose of filing her response to our November 20 Motion.”<sup>1</sup> Accordingly, Plaintiff Kjessler’s Motion for Limited Intervention is unopposed.

In light of the procedural posture of the related cases, the simple and most efficient means to resolve the disputed leadership motion remains to defer decision until such time as the Judicial Panel on Multidistrict Litigation decides the motion to consolidate or the Oregon court transfers the

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<sup>1</sup> ECF No. 14 at 2.

first-filed case. At that time, the Court may institute a process to appoint leadership in a manner that respects the interests of all parties.

Plaintiff Braley argues that her motion for appointment of lead counsel on November 20, 2017 was timely.<sup>2</sup> But on that date, the *Braley* Action was the only case with similar allegations pending in the Southern District of Texas. The *Kjessler* Action was already pending in Oregon, but the *Rueckert* Action was not filed until November 27, 2017.<sup>3</sup> As a result, Plaintiff Braley moved this Court to appoint lead counsel over a case before another district court (the *Kjessler* Action) and a case that did not even exist (the *Rueckert* Action). Lead counsel can and should be designated only after those cases are consolidated before this Court, but not before.

Plaintiff Braley also urges Plaintiff Kjessler to “simply dismiss” the Oregon Action and refile it in the Southern District of Texas.<sup>4</sup> But Plaintiff Kjessler has already sought to quickly resolve the forum dispute in the most time-efficient way, through a motion for voluntary transfer before the Oregon Court. That motion remains pending before the Oregon court, and will be decided in due course.

Plaintiff Braley’s allegation of gamesmanship is not well made. Nor is Plaintiff Braley’s insistence on maintaining her premature motion to appoint leadership. To do so is to misuse this Court’s resources. For the reasons stated herein and her Motion, Plaintiff Kimberly Kjessler respectfully requests that this Court grant her Motion for Limited Intervention.

Dated: December 26, 2017

Respectfully submitted,

/s/ Warren Burns  
Warren T. Burns  
TX State Bar No. 24053119

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<sup>2</sup> See ECF No. 11 in the *Braley* Action.

<sup>3</sup> *Kjessler v. Zaappaaz, Inc., et al.*, No. 17-1361 (D. Or.), *Rueckert v. Zaappaaz, Inc., et al.*, No. 17-3607 (S.D. Tex.).

<sup>4</sup> *Id.*

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**Attorneys for Plaintiff Kimberly Kjessler**

**CERTIFICATE OF SERVICE**

On December 26, 2017, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Southern District of Texas, using the electronic case filing system. I hereby certify that I have provided copies to all counsel of record electronically or by another manner authorized by Fed. R. Civ. P. 5(b)(2).

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